

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

CALMAT CO.,

Plaintiff,

vs.

Civ. No. 16-26 KG/JHR

OLDCASTLE PRECAST, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

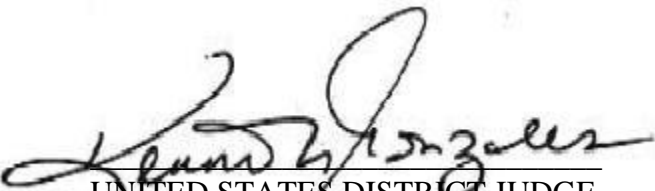
This matter comes before the Court upon Rune Kraft's "Notice of Motion and Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56" (Motion for Summary Judgment), filed December 13, 2017. (Doc. 203). Defendant Oldcastle Precast, Inc. (Oldcastle) filed a response on December 28, 2017. (Doc. 216). On January 4, 2018, Rune Kraft (Kraft) filed a reply and "Request that the Court Moves *Sua Sponte* (Subject to Motion for Summary Judgment)" (Request). (Docs. 226 and 227). Having reviewed the Motion for Summary Judgment, the accompanying briefing, and the Request, the Court denies both the Motion for Summary Judgment and the Request.

As the Court previously ruled, "Kraft obviously is no longer a party to this lawsuit and so may not continue to participate in the litigation of the merits of this lawsuit." (Doc. 167) at 2 (citing *U.S. ex rel. McCready v. Columbia/HCA Healthcare Corp.*, 251 F. Supp. 2d 114, 119 (D.D.C. 2003) ("general rule that nonparties may not participate in litigation"); *Abeyta v. City of Albuquerque*, 664 F.3d 792, 795 (10th Cir. 2011) (generally "only parties to a lawsuit, or those that properly become parties, may appeal an adverse judgment"). Given that Kraft is not a party to this lawsuit, he cannot file dispositive motions like the Motion for Summary Judgment and his

Request, which both seek a determination that Oldcastle has no claim to the royalty proceeds at issue in this interpleader lawsuit. Therefore, the Court will strike the Motion for Summary Judgment and the Request.

IT IS ORDERED that:

1. Kraft's "Notice of Motion and Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56" (Doc. 203) is stricken; and
2. Kraft's "Request that the Court Moves *Sua Sponte* (Subject to Motion for Summary Judgment)" (Doc. 227) is stricken.



UNITED STATES DISTRICT JUDGE